**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 11017 of 2004**
**With**
**SPECIAL CIVIL APPLICATION No. 11019 of 2004**
**With**
**SPECIAL CIVIL APPLICATION No. 11020 of 2004**
**With**
**SPECIAL CIVIL APPLICATION No. 11022 of 2004**
**With**
**SPECIAL CIVIL APPLICATION No. 11025 of 2004**
**With**
**SPECIAL CIVIL APPLICATION No. 11027 of 2004**
**With**
**SPECIAL CIVIL APPLICATION No. 11028 of 2004**
**With**
**SPECIAL CIVIL APPLICATION No. 11029 of 2004**
**With**
**SPECIAL CIVIL APPLICATION No. 11030 of 2004**
**With**
**SPECIAL CIVIL APPLICATION No. 11031 of 2004**
**With**
**SPECIAL CIVIL APPLICATION No. 11623 of 2005**
**With**
**SPECIAL CIVIL APPLICATION No. 11624 of 2005**
**With**
**SPECIAL CIVIL APPLICATION No. 11625 of 2005**
**With**
**SPECIAL CIVIL APPLICATION No. 11626 of 2005**
**With**
**SPECIAL CIVIL APPLICATION No. 11627 of 2005**
**With**
**SPECIAL CIVIL APPLICATION No. 11628 of 2005**
**With**
**SPECIAL CIVIL APPLICATION No. 11629 of 2005**
**With**
**SPECIAL CIVIL APPLICATION No. 11630 of 2005**
**With**
**SPECIAL CIVIL APPLICATION No. 11631 of 2005**

**With**
**SPECIAL CIVIL APPLICATION No. 11632 of 2005**
**With**
**SPECIAL CIVIL APPLICATION No. 11633 of 2005**
**With**
**SPECIAL CIVIL APPLICATION No. 11634 of 2005**
**With**
**SPECIAL CIVIL APPLICATION No. 12123 of 2005**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE P.B.MAJMUDAR**

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

**K.D.PATEL AND OTHERS**
**Versus**
**GSFC -THRO- CHAIRMAN AND OTHERS**

==========

**Appearance :**
Mr. Bhaskar P Tanna, Senior Advocate, assisted by Mr. Girish Ramakrishnan, advocate, in SCAS No. 11017 11031 of 2004.

Dr. Mukul Sinha, learned advocate petitioners in the remaining matters.

Mr. N.D. Nanavati, Senior Advocate assisted by Mr. R.D. Dave for respondents.

==========

**CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR**

**Date : 09/09/2005**

**COMMON CAV JUDGMENT**

1. Since common point is involved in all these petitions, all these matters are disposed of by this common judgment.

2. For easier and quicker reference, since facts of all the petitions are almost identical, Special Civil Application No. 11623/2005 is taken as the main petition, for general reference to the contentions of both the sides as also the annexures.

3. By filing these petitions, the petitioners have challenged the action of the respondent Gujarat State Financial Corporation [hereinafter referred to as the Corporation] in

superannuating them under regulation No. 19 of the Gujarat State Financial Corporation [Staff] Regulations, 1961 [hereinafter referred to as the Regulations] on the ground that they have either attained the age of 55 years or completed 30 years of service as may be applicable in the facts of the individual case. The grievance of the petitioners ventilated in this group of petitions is that they are entitled to serve till they attain the age of 58 years and they cannot be made to retire compulsorily, before reaching the said age as according to the petitioners 58 years of age is the age for superannuation.

4. Before proceeding further, it would be relevant to look into regulation No. 19 of the Regulations, which reads as under:

> 19. Superannuation and Retirement :- An employee shall retire on his attaining the age of 58 years or on completion of 30 years of service, whichever is earlier :- Provided that the Board may at its discretion retain an employee in service after completing 30 years of service or on attaining the age of 58 years by sanctioning from time to extension of such

employee's employment for a period not exceeding one year at a time if such an employee is physically and mentally fit, and that such extension of service shall in no case be sanctioned beyond the age of 60 years.

Provided further that the Board may after giving three month's previous notice in writing require an employee to retire from the service on the date on which such an employee attains the age of 55 years or on completion of 30 years of service whichever is earlier or any date thereafter to be specified in the notice. An employee may, however, after giving atleast three months' notice in writing to the Managing Director retire from service on the date on which he attains age of 55 years or on completion of 30 years of service whichever is earlier or on any other date to be specified in the notice.

Explanation I – For the purpose of this Regulation service shall not include any period of service rendered by an employee before attaining the age of twenty one years.

Explanation II – Notwithstanding anything

contained in this Regulation where an employee has at the credit of his leave account ordinary leave earned and has in sufficient time before the date of retirement either:-

(1). Formally applied for leave and been refused it, or,

(2). ascertained in writing from the Managing Director, that leave, if applied for, would not be granted he may be permitted to avail of the leave so refused and in that case the employee would be deemed to have retired from service on the expiry of the leave.

5. This group of petitions can be classified into three classes.

(i). The employees who have completed 30 years of service.

(ii). The employees who have not completed 30 years of service but have attained the age of 55 years.

(iii) The employees who have completed 30 years but have not attained the age of 58 years.

6. The Corporation, by resorting to regulation No.19 of the Regulation has passed individual orders asking the petitioners to

retire from service. Once of such order, which is impugned in SCA No. 11017 of 2004, is finding place at page 29 in the compilation of that petition. As per the same, the Administrative Manager of the Corporation has informed the said petitioner that since the petitioner of that Special Civil Application is rendering his service from 12.1.1976 and at present he is serving as Manager, and looking to his birth date, 30.11.1947, he has attained the age of 55 years. Therefore, either he has completed 30 years of service or has attained the age of 55 years, in view of the decision of the Board of Directors in its meeting dated 28.05.04, he is ordered to be relieved from service on the ground of attaining the age of superannuation. Individual orders have been passed against each of the petitioners. Accordingly, by the impugned orders passed against each of the petitioners, the petitioners have been relieved from service on the ground that the petitioners have reached the age of superannuation, i.e. either by completing 30 years of service or by attaining the age of 55 years.

7. Learned advocates for petitioners have

placed on record charts, which shows that some of the employees have completed 30 years of service but they have not attained the age of 58 years, and some employees have completed 30 years of continuous service but have not reached the age of 55 years.

8. The common point raised on behalf of the petitioners in each of these petition is that the age of superannuation is 58 years, and, therefore, the petitioners should be allowed to continue in the service till they attain 58 years which is the age of superannuation, and it is not open for the Corporation to retire an employee earlier unless specific grounds exist for retiring the employee earlier compulsorily. The only point which is required to be considered in these petitions is the age of superannuation.

9. Regulation 4 provides for as under:

> 4. Circulation of Amendments: Any new Regulation or alteration in an existing Regulation shall be issued in the form of a circular for circulation among the staff:
> Provided that no new regulation or an

alteration in an existing Regulation shall operate to reduce the scale of pay of an employee on which he is entitle to draw pay in a substantive capacity on the day the new Regulation or alteration comes into force.

10. Chapter II of the Regulations provide for appointments, probation and termination of service. Resorting to regulation No. 19 referred to herein above by the impugned orders in each petitions, the petitioners have been relieved from service on the ground that some of them have attained the age of 55 years and some of them have completed 30 years of service. As pointed out earlier, in this bunch of petitions, the Court is concerned with class of employees who have not reached the age of 58 years. The other group of employees are such who have completed 30 years or service but have not reached 58 years. There is another class of employees in the group of petitions who have not completed 30 years of continuous service, but have attained the age of 55 years. By the impugned orders, all these classes of petitioners have been relieved from service on the ground that they have either completed 30 years of service or attained age of 55 years

or both, and, therefore, they have no right to continue in service. The petitioners, by filing these petitions, have challenged the said decision on the ground that as per the practice prevailing in the Corporation, the employees have been allowed to serve unto the age of 58 years and they cannot be asked to retire from service till they attain the age of superannuation, which, according to the petitioners, is 58 years. Both the learned counsel, Mr. Tanna and Dr. Mukul Sinha have given a chart showing the date of birth, date of completion of 30 years and date of completion of 55 years and left out period for attaining the age of 58 years by the concerned employee.

11. It is not in dispute that none of the petitioners have attained the age of 58 years. However, the petitioners have either completed 30 years continuous service with the Corporation or attained the age of 55 years. The grievance of the petitioner is that unless they attain the age of 58 years, it is not open to the Corporation to make them retire by treating the age of superannuation as 55 years or on the ground that they have completed 30 years of continuous service. It is submitted

that if an employee is continued in service after he completed 30 years of service, then it is not open for the Corporation to make them retire unless they attain the age of 58 years, unless such retirement is required to be made in public interest. It is submitted on behalf of the petitioners that all throughout, the Corporation has allowed the persons to serve upto the age of 58 years, by treating the aforesaid age for the purpose of superannuation, and except in the present cases, in no other cases in the past, employees have been made retire on attaining the age of 55 years or on completion of 30 years of continuous service. It is submitted that, therefore, the action of the Corporation in retiring all these employees by a stroke of pen is arbitrary, discriminatory and violative of Article 14 of the Constitution of India, and there is no reason to depart from the said practice and the petitioners should be allowed to serve upto 58 years of age. On behalf of the petitioners, it is submitted that once an employee is allowed to continue in service, after crossing 55 years of age, it is not open for the Corporation to take shelter under Regulation 19 of the Regulations for the purpose of retiring such employee from service.

It is submitted that if the Corporation wants to retire an employee before he reaches the age of 58 years, such powers can be exercised only in an individual case, if it is found that such employee is required to be retired in public interest, and that it is not in public interest to continue the services of such an employee in view of the service record of the concerned employee. It is submitted that in any case, the action of the Corporation retiring some of the employees who have not even completed 30 years of continuous service but have only attained 55 years, is absolutely arbitrary, as some of the employees have been asked to retire on the ground that they have completed 30 years of service even though they have not attained the age of 58 years. It is submitted that the aforesaid cases clearly reflect the high handed action on the part of the Corporation. It is submitted that since the Employees' Union of the GSFC has filed a writ petition in connection with the reduction of their pay scale, the Corporation has taken the decision to relieve the petitioners from service of the Corporation under the guise that they have attained the age of 55 years or completed 30 years of service. It is submitted that the said action of the Corporation is, therefore,

not bonafide and is based on ulterior motive. It is also submitted on behalf of the petitioners that the Regulations have been replaced by the Gujarat State Financial Corporation (Staff) Regulations, 1979, particularly Regulation 18 thereof, and, therefore, the Corporation could not have retired the employees merely on the ground that they have completed 30 years of service and such employees are entitled to continue in service till they attain the age of 58 years. It is also argued that even assuming that the 1961 Regulations still hold the field, the power under the 2nd proviso to Regulation 19 of the 1961 Regulations cannot be exercised without examining the service record of each individual employee and such powers cannot be exercised on the ground that the Corporation is over-staffed as reflected in the decision of the Board of Directors while dismissing the petitioners' appeals. It is also submitted on behalf of the petitioners that the petitioners had legitimate expectation of continuing in service till the age of 58 years and they have made several financial commitments on that basis. If the impugned orders are permitted to be implemented, the petitioners will suffer irreparable loss and injury which cannot be

compensated in terms of money, as the petitioners have several social and financial obligations to fulfill at the fag end of their service. In support of the contentions raised and argued on behalf of the petitioners, reliance was made on various decisions of the High Courts and Apex Court. On behalf of the petitioners, it is submitted that considering the facts and circumstances of the case, the petitions are required to be allowed and appropriate writ, order, or direction is required to be issued under Article 226 of the Constitution of India, directing the respondent GSFC to allow the petitioners to continue in service till they attain the age of 58 years as all throughout in the past, the Corporation has followed the practice of superannuating its employees on attaining the age of 58 years.

12. On behalf of the Corporation, learned Senior Advocate, Mr. N.D. Nanavati, relying on the first part of Regulation No.19, has submitted that on completion of 30 years of service, an employee has no right to continue in service. He submitted that the said regulation clearly provides that an employee shall retire on his attaining the age of 58 years or on completion of 30 years of service,

whichever is earlier. He further submitted the second proviso to the aforesaid Regulation No. 19 clearly provides that the Corporation has the power to retire any employee from the service on the date on which such an employee attains the age of 55 years or on completion of 30 years of service whichever is earlier or any date thereafter. He further submitted that if the Corporation has continued an employee even after completion of 30 years of service, such continuation should be treated as an extension of service, and by that no right is created in favour of the employee. It is further submitted that an employee has no right to continue in service the moment he completes 30 years of continuous service, and that an employee has no right to continue in service till he attains the age of 58 years. It is submitted that as per Regulation No. 19 there are three stages where an employee can be made to retire from service:

1. On attaining the age of 58 years.
2. On completing 30 years of service
3. On attaining 55 years of age.

13. According to Mr. Nanavati, whichever event occurs earlier, an employee is required to retire from service as provided under the

aforesaid regulation. He therefore submitted that in view of the aforesaid regulation, even if an employee has not completed 30 years of service, but if he has reached the age of 55 years, he can be retired under the proviso to Regulation No.19. He submitted that it is not necessary that only in public interest an employee can be retired before he attains the age of 58 years of age. He further submitted that in all these cases, each of the petitioners should be treated to have continued by extension as they have no right to continue in service once they attain the age of 55 years or complete 30 years of service. Mr. Nanavati also relied on various judgments to substantiate his submissions. Mr. Nanavati submitted that the financial position of the Corporation is weak, and the Board of Directors have decided to retire the employees who have either completed 30 years of service or have attained the age of 55 years. He further submitted that at present the1961 Regulations are in force and the Corporation has passed the orders resorting to Regulation No. 19 of the 1961 Regulations. Mr. Nanavati has vehemently submitted that even if any employee has continued after completion of 30 years of service or after attaining 55 years of age,

such continuation of service should be treated as an extension of service only which would not confer any right on such employee to continue in service till he attains the age of 58 years and at any point of time before he attains the age of 58 years, the Corporation has got the right to retire him from service. Mr. Nanavati, therefore, submitted that there is no substance in the petition. It is alternatively submitted that since without prejudice to the rights and contentions some of the petitioners have taken retirement benefits, even if ultimately these petitions are allowed, no order reinstating them in service should be passed without first asking them to repay the amount. This argument is made as an alternative argument and the main contention of Mr. Nanavati is that the petitioners have no right to continue in service after completion of 30 years of service or on attaining the age of 55 years.

14. I have heard both the learned counsel at great length. I have also gone through the Regulation as well as various judgments cited by both the sides. At the time of admitting Spl. C.A. No. 11017 of 2004 and cognate matters, the learned Single Judge, while

refusing to grant interim relief, observed that it would be open to the petitioners to get all their retiral benefits without prejudice to their rights and contentions in these petitions.

15. Mr. Sinha has also argued that Regulation 19 is ultravires inasmuch as it is not providing any guidelines as to in which manner powers are to be exercised nor it provides for retiring a person on the ground of public interest. He submitted that under the guise of resorting to power under regulation 19, virtually the Corporation has resorted to termination of services of the employee in an arbitrary manner. He submitted that in any case, the Corporation can resort to such powers by retiring a person before he attains the age of 58 years, which is the age of superannuation in public interest only if it is found that such employee is incompetent or is like dead-wood. He submitted that the Corporation cannot act in an arbitrary manner by resorting to Regulation No. 19 by continuing certain employees upto the age of 58 years of age and retiring some employees before attaining that age. It is required to be noted that it is not in dispute that till the aforesaid orders

are passed against the present set of employees, all throughout the Corporation has resorted to Regulation No.19 by retiring a person at the age of 58 years. It is not in dispute that at no point of time, the Corporation has applied regulation No. 19 for retiring a person on the basis of completion of 30 years of service or attaining 55 years of age. The present cases are solitary cases since the inception of the Corporation whereby the Corporation is trying to resort to regulation No. 19 for retiring a person even if he has not attained 58 years of age but has completed 30 years of service. However, in the affidavit in reply filed by one Mr. Mahendra Natverlal Shah, who is working as Deputy General Manager with the respondent Corporation it is averred that the petitioners have been made to etire by operation of law and the regulation and that the retirement is in accordance with 1961 Regulations which are part of the condition of service, which is in existence since the petitioners joined the services and the regulations have become part of the contract. In the relevant part of paragraph 6.3 of the affidavit-in-reply, it is stated as under:

> “Accordingly, an employee shall retire at the stage of 58 years or on completion of 30 years of service, whichever is earlier. It further provides that the Board may, after giving three month's prior notice in writing require an employee to retire from service on the date on which such employee attains the age of 55 years or completes 30 years of service, whichever is earlier, or any date thereafter to be specified in the notice. Likewise, an employee can also make an application for retirement by giving three months' notice in writing to Managing Directors on the date o n which he attains 55 years of age or on completion of 30 years of service. These Regulations are in operation and in existence since 1961, which are binding to all the Officers and Employees.”

In paragraph 6.4 of the affidavit in reply, it is averred that the Corporation is facing a financial crisis. The relevant part of paragraph 6.4 in this regards is as under:

> “Therefore, the Board of Directors and the State Government have decided for

restructuring the organization by taking various measures and steps. One of them was to stop giving any finance to new loanee from the year 2001. Thus, there is no activity of giving finance by GSFC. Therefore, the only activity which is left out is to recover outstanding dues from the borrowers. Therefore, except the activity of recovery, no other activity is left out. The State Government introduced Voluntary Retirement Scheme (VRS) in the year 2003 for all the employees and officers, including the officers and employees, who attained the age of 55 years. However, very poor response was received as only 176 employees/officers opted for VRS under the Scheme. "

16. Thus, it appears from the tenor of the affidavit in reply that the Corporation has taken the action impugned in these petitions in view of the financial crisis.

17. On behalf of the petitioners, Mr. Sinha, learned advocate has relied on the judgment in the case of **AIR INDIA vs. NAGESH MEERZA reported in AIR 1981 SC 1829.** This case was in

connection with determination of retirement age of an Air Hostess. Mr. Sinha relied on paragraphs 100, 102, 117 and 188 of the said judgment, which is reproduced below:

> ""100. The next provision which has been the subject matter of serious controversy between the parties, is the one contained in Regulation 46 (i)(c. According to this provision, the normal age of retirement of an AH is 35 years which may at the option of the Managing Director be extended to 45 years subject to other conditions being satisfied. A similar regulation is to be found in the Rules made by the I.A.C. To which we shall refer hereafter. The question of fixation of retirement age of an AH is to be decided by the authorities concerned after taking into consideration various factors such as the nature of the work, the prevailing conditions, the practice prevalent in other establishments and the like. In Imperial Chemical Industries (India) Pvt. Ltd. v. The Workmen (1961) 2 SCR 349 : (AIR 1961 SC 1175), this Court pointed out that in fixing the age of retirement, changing the terms and

conditions of service, the determination of the age on industry-cum-region basis would undoubtedly be a relevant factor. In this connection, Ganendragadhar, J. made the following further observations : (at p.1178 of AIR)

> “There is no doubt that in fixing the age of retirement no hard and fast rule can be laid down. The decision on the question would always depend on a proper assessment of the relevant factors and may conceivably vary from case to case”
>
> xxx xxx xxx xxx

102. It is, therefore, manifest that the factors to be considered must be relevant and bear a close nexus to the nature of the organization and the duties of the employees. Where the authority concerned takes into account factors or circumstances which are inherently irrational or illogical or tainted, the decision fixing the age of retirement is open to serious scrutiny.

> xxx xxx` xxx

117. Regulation 46 (i) (c) provides that AH would retire on attaining the age of 35 years or on marriage if it takes

place within four years of service. The last limb of this provision relating to first pregnancy in the case of AHs has already been struck down by us and the remaining sub-clause (c) has to be read with Regulation 47 which provides that the service of any employee may, at the option of the Managing Director, on the employee being found medically fit, be extended by one year beyond the age of retirement, the aggregate period not exceeding two years. This provision applies to employees who retire at the age of 58. So far as the AHs are concerned, under the Regulation the discretion is to be exercised by the Managing Director to extend the period upto ten years. In other words, the spirit of the Regulation is that an AH, if medically fit, is likely to continue up to the age of 45 by yearly extensions given by the Managing Director. Unfortunately, however, the real intention of the makers of the Regulation has not been carried out because the Managing Director has been given an uncontrolled, unguided and absolute discretion to extent or not to extent the

period of retirement in the case of AHs after 35 years. The words 'at the option' are wide enough to allow the Managing Director to exercise his discretion in favour of one AH and not in favour of the other which may result in discrimination. The Regulation does not provide any guidelines, rules or principles which may govern the exercise of the discretion by the Managing Director. Similarly, there is also no provision in the Regulation requiring the authorities to give reason for refusing to extent the period of retirement of AHs. The provision does not even give any right of appeal to higher authorities against the order passed by the Managing Director. Under the provision, as it stands, the extension of the retirement of an AH is entirely at the mercy and sweet-will of the Managing Director. The conferment of such a wide and uncontrolled power on the Managing Director is clearly violative of Article 14, as the provision suffers from the vice of excessive delegation of powers.””

18. Mr. Sinha has also relied on the judgment

in the case of **BRIJ MOHAN SINGH v. STATE OF PUNJAB reported in AIR 1987 SC 948**. The aforesaid case was in connection with compulsory retirement. In paragraph 5, the Apex Court held as under:

> "5. The above rule invests absolute right in the appropriate authority to retire an employee prematurely on his completion of 25 years of qualifying service or 50 years of age. The appropriate authority as defined by rule 2 means the authority which has the power to make substantive appointment to the post or service from which the Govt. employee is required to retire. Before a Govt. employee is retired in exercise of power under this rule it is necessary that the Govt. servant must have completed 25 years of qualifying service or he must have attained 50 years of age and further he must be given three months' notice in writing. The rule does not lay down any criteria, guidelines for the exercise of power, although public interest is specified in the rule, which means power has to be exercised in the

> public interest only. The public interest in relation to public administration envisages retention of honest and efficient employees in service and dispensing the services of those who are inefficient, dead-wood or corrupt and dishonest. Therefore the rule contemplates premature retirement of the inefficient, corrupt or dead-wood which would subserve the public interest".

Relying upon the same, Mr. Sinha submitted that in the instant case, an employee can be made to retire only in public interest. He submitted that such powers are required to be used in a judicious manner on formulating an opinion as per service record.

19. Mr. Sinha has also relied on the judgment in the case of **SENIOR SUPDT. OF POST OFFICE v. IZHAR HUSSAIN reported in AIR 1989 SC 2262**. in the said case, the Apex Court held that if the Government is given absolute discretion under the relevant rules for retiring an employee on attaining 30 years of service, such a rule is ultravires to Article 14 and 16 of the Constitution. Mr. Sinha relied on paragraphs 3, 4 and 5 of the said judgment,

which read as under:

> ""3. Central Government servants superannuate at the age of 58 years. The Government has the absolute right under Rule 56 (j) of Fundamental Rules to prematurely retire a servant in 'public interest' after he has attained the age of 55 years. The Government has also the power under Rule 2(2) of Pension Rules to retire a servant at any time after he has completed 30 years of qualifying service. We may quote these Rules:
>
> "F.R. 56 (j) Notwithstanding anything contained in this Rule, the appropriate authority shall, if it is of the opinion that it is in the public interest to do so, have the absolute right to retire any Government servant after he has attained the age of fifty-five years by giving him notice of not less than three months in writing.
>
> Provided that nothing in this clause shall apply to a Government servant referred to in clause (e) or clause (f)."

> “Rule 2(2). An officer may retire from service any time after completing 30 years' qualifying service provided that he shall give in this behalf a notice in writing to the appropriate authority at least 3 months before the date on which he wishes to retire. Government may also require an officer to retire, any time after he has completed 30 years qualifying service provided that the appropriate authority shall give, in this behalf a notice in writing to the officer at least three months before the date on which he is required to retire, or three months' pay and allowances in lieu of such notice.”

4. Fundamental Rule 56 (j) while granting absolute right to the Government provides that such power can only be exercised in “Public Interest”. This guide-line is a sufficient safeguard against the arbitrary exercise of power by the Government. The object of this Rule is to chop-off the dead-wood. Rule 2(2) of the Pension Rules on the other

hand provides no guideline and gives absolute discretion to the Government. There is no requirement under the rule to act in “Public Interest”. A person who joins Government service at the age of 21 years can be retired at the age of 51/52 years as by then he must have completed 30 years of qualifying service. Although the rules are mutually exclusive and have been made to operate in different fields but the operational effect of the two rules is that a Government servant who has attained the age of 55 years can be retired prematurely under F.R. 56 (j) only on the ground of 'Public Interest' whereas another Government servant who is only 51 and has completed 30 years of qualifying service, can be retired at any time at the discretion of the Government under Rule 2 (2) of the Pension Rules.

5. The object of Rule 2 (2) of Pension Rules may also be to weed-out those Government servants who have outlived their utility but there is no guide-line provided in the Rule to this effect. The Rule gives unguided discretion to the Government to retire a Government servant

at any time after he has completed 30 years of qualifying service though he has a right to continue till the age of superannuation which is 58 years. Any Government servant who has completed 30 years of qualifying service and has not attained the age of 55 years can be picked-up for premature retirement under the Rule. Since no safeguards are provided in the Rule, the discretion is absolute and is capable of being used arbitrarily and with an un-even hand. We,therefore, agree with the Division Bench of the High Court and hold that Rule 2 (2) of the Pension Rules is ultra-vires Articles 14 and 16 of the Constitution of India. ””

20. Mr. Sinha also relied on the judgment in the case of **CHANDRA SINGH vs. STATE OF RAJASTHAN reported in (2003) 6 SCC 545**. The aforesaid case was in connection with the question of extension of service upto 60 years of the judicial officers of the State of Rajasthan. Thea aforesaid case, in my view, may not be applicable so far as the present case is concerned.

21. Mr. Sinha also relied in the case of **UNION OF INDIA vs. SHAIK ALI reported in AIR 1990 SC 450** wherein the Honourable Supreme Court has interpreted Rule 2046(h)(ii) of the Indian Railway Establishment Code. Under Rule 2046 (a) of the Code, ordinarily every railway servant would retire on the day he attains the age of 58 years. However, notwithstanding the said provision, Rule 2046 (h) entitled the appointing authority to retire him before he reaches the age of superannuation by giving him notice of not less than three months in writing or three month's pay and allowance in lieu of such notice. In the aforesaid case, the employee was made to retire on completion of 30 years of service but before he had reached the age of 55 years, which is the age of superannuation. The Supreme Court found that the order in question was punitive in nature and passed in flagrant violation of principles of natural justice. In paragraph 7, the Apex Court held as under:

> “7. Before we part, we may observe that the concerned authorities will do well to amend Rule 2(2) of the Pension Rules and Paragraph 620(ii) referred to above so as to incorporate therein the requirement of

public interest, that is to say, the premature retirement on completion of qualifying service of thirty years can be ordered in public interest only".

22. Mr. Sinha also relied on the judgment of the Allahabad High Court in the case of **DR. RAJ KUMAR MISRA v. STATE OF U.P. Reported in 1988 VOL. 56 FLR page 36**. In the said case, the Allahabad High Court held that financial crisis of the government or a public body or ex-economic difficulty cannot furnish material for retiring an employee under the relevant rule. The Court held as under in paragraph 2:

"2. Issue that arises for consideration, therefore is if resolution which led to impugned action is sustainable in law. Retirement under Rule 53 (1) (b) of Zila Parishad Rules 1970 read with Explanation could be without assigning any reason but in public interest. That is the employee must have rendered himself unfit, incompetent or useless. It is associated with employees. It is personal to him. Financial crisis of the Government or a public body or ex-economic difficulty cannot, therefore, furnish material for

> retiring an employee under this rule. That may well entitle abolition of posts, in good faith. But that is not the resolution. The abolition of post follows retirement and not precedes it. The order of retirement, therefore, be in contrary to the rule cannot be upheld."

Relying on the aforesaid judgment, Mr. Sinha argued that financial difficulties in the instant case, cannot be taken as a ground to retire the employees in a wholesale manner. He submitted that if at all the Corporation is facing financial crisis, it can abolish the posts.

23. Mr. Sinha also relied on the judgment in the case of **RAJAT BARAN ROY v. STATE OF W.B. Reported in (1999) 4 SCC 235**. The aforesaid case was in connection with the retirement of judicial officers of the State of West Bengal. The said case, the retirement age of the petitioners, who were judicial officers, stood raised to 60 years by virtue of Government order dated 20.6.198 read with Central Government Order dated 13.5.1998. The Supreme Court held that the State, after issuing order dated 20.6.1992 read with Central Govt. OM dated 13.5.1998 and State GO dated 15.5.1998,

cannot take recourse to the rider for compulsorily retiring the petitioners on their attaining the age of 58 years. It is also held by the Supreme in the said case, by interpreting West Bengal Service Rules, that such rule applies where the power of compulsory retirement is exercised in public interest and that too on satisfying conditions mentioned in the concerned rule.

24. Mr. Sinha also relied on the judgment in the case of **NEW BANK OF INDIA OFFICERS ASOCIATION (TAMIL NADU UNIT} vs. NEW BANK OF INDIA AND OTHERS reported in (1996) 2 LLJ 218** wherein a learned Single Judge of the Madras High Court held that a permanent employee of the Bank cannot be compulsorily retired from service. Following a Division Bench Judgment of the said Court, learned Single Judge held that Regulation 19(1)and Regulation 1(2) are invalid inasmuch as it gives arbitrary powers to the Bank for retiring employees compulsorily. It has been held that since there are no guidelines for the Special committee to decide the basis on which the officers can be recommended for compulsory retirement, the regulation gives arbitrary powers to the Bank and a permanent employee of the Bank cannot be

compulsorily retired from services at the pleasure of the employer. It was found that there was no guidelines for exercise of such powers.

25. Relying on the aforesaid judgments, it was argued by Mr. Sinha that the action of the respondent is unsustainable and and such action can be taken only in individual cases and in public interest, and cannot be taken in a wholesale manner. Relying upon the affidavit-in-reply filed on behalf of the Corporation, it is argued by learned advocates for the petitioners that if the petitioners have been made to retire in view of financial crisis, then it can be said that they have been made to retire compulsorily, by way of compulsory retirement, and not by way of superannuation on reaching a particular age or particular period of service. It is argued that in such case, such power cannot be exercised on an enmasse basis, but can be exercised only in individual cases. It is, therefore, submitted by the learned advocates for the petitioners that the Corporation cannot say that on reaching the age of superannuation, they have been made to retire. It is also argued that in a given case, if there is any financial problem, it is always

open for the Corporation to abolish posts by following appropriate proceedure in this behalf.

26. On behalf of the Corporation, Mr. N.D. Nanavati relied on the judgment in the case of **BATHARI JENA V. STATE OF ORISSA reported in 1971 (2) SCC 232**. In paragraphs 6 and 9, the Apex Court held as under:

> "6. In our view the above contention cannot be accepted. Before May 21, 1963 an employee of the Government of Orissa would have been due for superannuation when he attained the age of 55 years whether he had or had not put in 30 years' qualifying service. Government had before the said date an option to ask him to retire if he had completed 30 years qualifying service even though he has not reached the age of fifty-five years: correspondingly the officer had the right to retire if he wanted to do so before he reached the age mentioned if he had 30 years' qualifying service to his credit. Fifty-five years was the outside limit of age to which an officer was permitted to work before superannuation. The

resolution of May 21, 1963, raised the age of superannuation from 55 to 58 but nevertheless under Paragraph 3 thereof the Government reserved to itself a right to ask any employee to retire when he attained the age of 55 years without assigning any reason. This was not unilateral. A government servant was not bound to continue in service beyond the age of fifty-five years unless he wanted it. There was no alteration in the rule under which a Government servant could voluntarily retire or be asked to retire in a case where he had completed thirty years' service. In other words, the right of Government to require an officer to retire at any time after he had completed 30 years' service was and still remained intact. This right which was not linked with the age of superannuation before May 1963 remained unaffected even after that date. Although the age of superannuation was raised from 55 to 58 years Government armed itself with the power to require any employee to retire when he attained the age of 55 years without assigning any reason.

9. Before May 1963, a Government

servant in Orissa had to retire on attaining the age of 55 years whether he had completed 30 years' qualifying service or not. The fact that the age of superannuation was raised from 55 to 58 years while Government reserved to itself a right to ask any employee to retire at the age 55 years does not violate Article 311 (2). “

27. Mr. Nanavati also relied on the judgment of the Supreme Court in the case of **B. NARAYANA MURTHY vs. STATE OF A.P. Reported in 1971 (2) SCC 425**. In the said case, the Apex Court considered whether the action of the government in passing orders classifying teachers for the purpose of retirement on the basis of a specified date was discriminatory or not, and held that the classification was founded on rational nexus with the object. In paragraph 17, the Apex Court held as under:

“17. The impugned Government orders fixing November 30, 1967, as the date for founding the classification of teachers who should retire at the age of 55 years and those who should get the benefit of

> the interim orders extending the age of retirement to 58 or to 60 years cannot be considered to be either irrational, or unreasonable or having no nexus with the object to be achieved by reducing the age of retirement. ... .... The classification made by the Government does not suffer from any infirmity as it is founded on rational nexus with the object to the achieved. “

28. The Supreme Court held further in the said case that merely because of some subsequent orders the extended age of retirement was accepted in respect of some employees, would not by itself entitle the present petitioner to claim similar extension in their age of retirement on the basis of the quality rule embodied in Articles 14 and 15 of the Constitution.

29. Mr. Nanavati further relied on the judgment in the case of **BISHUN NARAIN vs. STATE OF U.P. Reported in AIR 1965 SC 1567**. In the said case, at the time of recruitment, the age of retirement was 55 years. However, by a subsequent notification the Government raised the age of retirement to 58 years. The

Government again reduced the age of retirement to 55 years by a notification issued under Art. 309 of the Constitution. By a second notification the Government issued order the effect of which was that all Government servants who would have retired because of the change in the age of retirement between a specified dated were retired in service except those who are reached the age of 58 years. In paragraph 5, the apex Court held as under:

> “5. ... ... In the present case what has happened is that the Government first raised the age of retirement from 55 years to 58 years in the year 1957 and the appellant got the advantage of that inasmuch as he remained in service after December 11, 1960 on which date he would have otherwise retired on completing the age of 55 years. Thereafter in 1961, the Government seems to have changed its mind as to the age of superannuation and reduced it back again to 55 years. Even so the rule dealt with the age of superannuation and the termination of service on reaching the age of superannuation was held by the majority in Moti Ram Deka's case, AIR 1964 SC 600,

as out of the application of Article 311. We have not been shown any provision which takes away the power of Government to increase or reduce the age of superannuation and, therefore, as the rule in question only dealt with the age of superannuation and the appellant had to retire because of the reduction in the age of superannuation it cannot be said that the termination of his service which thus came about was removal within the meaning of Article 311. The alteration in the circumstances of this case at least cannot be regarded as unreasonable. The argument that the termination of service resulting from change in the age of superannuation amounts to removal within the meaning of Art. 311 and, therefore, the necessary procedure for removal should have been followed, is negatived by the very case on which the appellant relies. We therefore hold that Art. 311 has no application to the termination of service of the appellant in the present case. “

30. Mr. Nanavati also relies on paragraph 7 of the aforesaid judgment, which reads as under:

“7. The last argument that has been urged is, that the new rule is discriminatory as different public servants have in effect been retired at different ages. We see no force in this contention either. So far as the rule is concerned it applies equally to all public servants and fixes the age of retirement at 55 years. There is no discrimination in the rule itself. It is, however, urged that the second notification, by which all public servants above the age of 55 years were required to retire on December 31, 1961 except those few who completed the age of 58 years between May 25, 1961 and December 31, 1961 shows that various public servants were retired at various ages ranging from 55 years and one day upto 58 years. That certainly is the effect of the second order. But it is remarkable that the order also fixed the same date of retirement namely December 31, 1961 in the case of all public servants who had completed the age of 55 years but not the age of 58 years before December 31, 1961. In this respect also,

therefore, there was no discrimination and all public servants who had completed the age of 55 years which was being introduced as the age of superannuation by the new rule by way of reduction were ordered to retire on the same date, namely December 31, 1961. The result of this seems to be that the affected public servants retired at different ages. But this was not because they retired at different ages but because their services were retained for different periods after the age of fifty-five. Now, it cannot be urged that if Government decides to retain the services of some public servants after the age of retirement it must retain every public servant for the same length of time. The retention of public servants after the period of retirement depends upon their efficiency and the exigencies of public service, and in the present case the difference in the period of retention has arisen on account of exigencies of public service. We are, therefore, of opinion that the second notification of May 25, 1961 on which reliance is placed to prove discrimination is really not

> discriminatory, for it has treated all public servants alike and fixed December 31, 1961 as the date of retirement for those who had completed 55 years but not 58 years upto December 31, 1961. The challenge, therefore, to the two notifications on the basis of Art. 14 must fail."

31. Mr. Nanavati also relied on the judgment in the case of **B.S. YADAV v. C.M., CENTRAL BANK OF INDIA reported in AIR 1987 SC 1706**. in the aforesaid case, the officers who were in service prior to nationalization of the bank were allowed to continue till 60 years of age and those officers who were recruited subsequent to 19.7.1969 i.e. After nationalization of banks, the age of superannuation was provided as 58 years under the relevant rules. In the aforesaid case, the Supreme Court held that Rule 3 of the relevant rules under challenge as constitutional as it satisfies the test of valid clarification. In paragraph 17, the Apex Court held as under:

> "17.We are of the view that the classification of the employees into two categories, i.e. those falling under rule

> 1 and 2 of the Rules for Age of Retirement and those falling under rule 3 thereof satisfies the tests of a valid classification laid down under Articles 14 and 16 of the Constitution. We do not, therefore, find any ground to declare rule 3 of the Rules for Age of Retirement, which is impugned in this case, as unconstitutional."

The facts of the aforesaid case and the present cases on hand are entirely different and the principles laid down in this judgment is of no assistance to the respondent.

32. Mr. Nanavati also relied in the judgment in the case of **LIC OF INDIA vs. S.S. SRIVASTAVA reported in AIR 1987 SC 1527**. In that case, the Supreme Court dealt with the question relating to the constitutional validity of Regulation 19 (2) of the LIC Staff Regulations 1960 as amended on 21.1.1977, which provides that an employee belonging to Class I or Class II appointed to the services of the Corporation on or after 1st September, 1956 shall retire on completion of 58 years of age but the competent authority may, if it is of the opinion that it

is in the interest of the Corporation to do so, direct such employee to retire on completion of 50 years of age and at any time thereafter on giving him three months' notice or salary in lieu thereof. It is required to be noted in that case, there were different retirement dates provided in the regulations for Class III and IV employees and class I and II officers. The Court held that after having accepted promotion and enjoyed benefits as such officer, complain of discrimination on ground that he would have benefit of retirement at 60 if he had remained in Class III. In the aforesaid case, it has been held by the Supreme Court held that fixation of age of retirement by itself cannot be considered to be arbitrary. In paragraph 24, the Apex Court held as under:

> “24. The next question for consideration is whether the fixation of 58 years as the age of superannuation in the case of the employees who entered the service after 1st September, 1956 is unreasonable. While dealing with this question, the Court can take judicial notice of the different ages of retirement prevailing in the several services in India. In almost all the public sector

> Corporations, Central services and State services, 58 years age is considered to be a reasonable age at which officers can be directed to retire from their services. So, the determination of 58 years as the age of superannuation by itself cannot be considered to be arbitrary.“

33. Mr. Nanavati also relied on the judgment in the case of **YESHWANT SINGH KOTHARI VS. STATE BANK OF INDORE reported in 1993 SUPP (2) SCC 592**. It has been held by the supreme court that regulation providing retirement on completion of 30 years of service in subsidiary banks of state bank of India is not arbitrary. In paragraph 11, the Apex Court held as under:

> “11. In K. Nagraj v. State of A.P. this Court repelled a challenge to the reduction of retirement age from 58 to 55 on the basis of the policy of the Government, which was found not to be irrational or violating recognized norms of employment plan. It was also noticed that not to provide for an age of retirement at all would be contrary to public interest because the State cannot

> afford the luxury of allowing its employees to continue in service after they have passed the point of peak and that rules of retirement do not take away the right of a member to his livelihood, the only limit is to the right to hold office till the stated number of years. The provision in the Regulation in hand for maintaining the age of retirement at 58 years as before but in the same breath permitting retirement on the completion of 30 years of service, whichever occurs earlier, is in keeping with the policy of reckoning a stated number of years of office attaining the crest, whereafter inevitably is the descent, justifying retirement. In this context 30 years' period of active service is not a small period for gainful employment, or an arbitrary exercise to withhold the right to hold an office beyond thirty years, having not attained 58 years of age."

34. Mr. Nanavati also relied on the judgment in the case of **RAMSWAROOP MASAWAN vs. MUNICIPAL COUNCIL reported in AIR 1999 SC 705**. In the said case, the Apex Court considered the case

of an employee who was allowed to continue in service after due date of retirement, and held that he stands superannuated on reaching requisite age of superannuation, and continuance in service thereafter amount to re-employment. In paragraph 3, the Apex Court held as under:

> “3. In our view, the High Court was right. At the relevant time the age of superannuation was 55 years. The appellant stood superannuated on reaching that age and, in law, his continuance in service thereafter can only be treated as re-employment. In the Municipal Council in question no retiral benefits were available to Overseers who retired on 26th January 1970. Therefore, the appellant could not legitimately make a claim thereto.”

35. It is required to be noted that all throughout, the Corporation has continued its employees upto the age of 58 years, and for the first time, may be because of financial difficulties, the Corporation has decided to retire some persons who have completed 30 years

of services or attained the age of 55 years, which also, according to Mr. Nanavati, is the age of superannuation. It is no doubt true that as per the first part of regulation No. 19, an employee shall retire on his attaining the age of 58 years or on completion of 30 years of service, whichever is earlier. However, the subsequent provisions of the Regulation is also required to be taken into account while considering this provision. It is required to be noted that on completion of 58 years of age, there is automatic superannuation, and when there is an automatic superannuation on reaching a particular age, no employee has got any right to continue beyond the aforesaid age, and even if he is continued, it can be said to be only an extension of service. However, in the instant case, none of the petitioners have attained the age of 58 years. Some of the petitioners have attained 55 years and some have completed 30 years of service, and some of them come under both of these criterion. Reading the affidavit in reply, it appears that the powers have been exercised only in view of the financial difficulties. There are no specific orders by which the employees have been given extension or re-employment. However, before issuing the

impugned order of retirement, notices have been given to all the petitioners individually. As per the decision, a copy of which is at page 10 of SCA No. 11623/05, the petitioners were informed in advance that they will be retiring on the date mentioned therein. Against the said decision appeals were preferred by the petitioners under the provisions of Regulation No. 13 of the Regulations. The said appeals were also heard by the Board of Directors, and the decision of the appellate authority is at page 24 of the complication of SCA No. 11623/05. While rejecting the appeals, the Corporation has communicated to the petitioners as under – relevant part of Annexure V, page 26.

> "The Board deliberated on the issue and discussed at length. The Board members applied their mind and took unanimous decision to reject all the appeals as Board is unable to accept any of the prayers made in the appeal for the following reasons:
>
> 1. GSFC has incurred heavy losses during recent years.
>
> 2. GSFC has stopped granting fresh finances to the enterprenuers for last

almost four years. As a result, the only activity done at present is recovery of loans. Therefore, workload has been reduced substantially which has resulted into surplus staff in the Corporation. As a result, Corporation took decision to retire surplus staff by exercising power under Section 19 of GSFC (Staff) Regulations, 1961, GSFC has never faced such critical situation before. Therefore also, there was no occasion to take such action under Regulation 19 in past.

3. In 2003, the applicants has opportunity to apply for VRS. However, except one employee, none of the remaining appellants has applied for VRS. Since criminal proceedings were pending against one employee, who has applied for VRS, his application after detailed scrutiny, was turned down at that time.

Looking to the losses incurred, financial restructuring and rehabilitation, reduction in staff is necessary and, therefore, it was considered to take such action.

All the employees are given sufficient

three months advance notice as per Regulation 19. Thus, there is compliance of provisions of law.

Thus, in view of aforesaid facts and circumstances and reasons mentioned above, Board is of the view that decision of the Corporation to retire the appellants is just and proper, and, therefore, all the appeals deserve to be rejected and, accordingly, they are rejected."

36. It is required to be considered that in view of the said finding on the part of the appellate authority also, it is clear that even in the past, at no point of time, the Corporation has resorted to regulation No. 19 to retire a person before he completed 58 years of age. It is, no doubt, true that as per regulation 19, on completion of 30 years of service, a person can be made to retire by way of superannuation. However, as per the sustained policy of the Corporation, at no point of time, the said clause was made applicable, and the Board has all throughout, treated the age of 58 years as the age of superannuation. It is not possible to accept

the argument of Mr. Nanavati that if an employee continued in service after completion of 30 years of service, such continuation should be treated as an extension of his service. That is even not the case of the Corporation in the affidavit-in-reply. That apart, there are no specific orders for extension though regulation provides for the same. It is also required to be noted that as per provisions to regulation 19, three months' notice is required to be given on the date on which such employee attains the age of 55 years or on completion of 30 years of service, which ever is earlier, or any date thereafter to be specified in the notice. In my view, if a person has to retire on attaining the age of superannuation, it is not necessary to give three months notice, since the employee shall stand automatically retired from service on attaining the age of superannuation. It is required to be noted that as per the aforesaid rule, an employee can also give three months' notice on attaining the age of 55 years or on completion of 30 years of service, whichever is earlier. Considering the said provisions, in my view, an employee who voluntarily wants to retire from service on attaining the age of 55 years or on completion of 30 years of service

can opt for retirement by giving three months' notice. If an employee has to automatically retire on attaining the age of 55 years or on completion of 30 years of service as per regulation 19, it is not necessary for the employee to give notice. Therefore, in order to have a harmonious meaning of regulation 19, which is drafted in a little bit clumsy manner, in my view, the only interpretation that could be made is that 58 years is the age of superannuation [which even according to the Corporation, it has been followed all throughout]. In case an employee wants to retire voluntarily on attaining the age of 55 years or on completion of 30 years of service, as per the second part of the second proviso, he may do so by giving three month's notice to the Corporation. If the employer wants to compulsorily retire an employee on attaining the age of 55 years or on completion of 30 years of service, the employer can also do so by giving three months' notice. If the regulation is to be interpreted in any other way, it may result into contradiction because if completion of 55 years or on completion of 30 years of service can be taken as a basis for automatic retirement from service, there would have been no question of either the employer or

the employee giving notice to each other, as the case may be. As the Corporation has treated the age of 58 years as the age of superannuation all throughout, regulation 19 is required to be interpreted in the aforesaid manner. The regulation may suffer from the vice of arbitrariness as no other guidelines are given as to in which cases such powers are to be exercised. I am not in a position to agree with the submissions of Mr. Nanavati for the Corporation that even 55 years is the age of superannuation. As a matter of fact, in both the eventualities, i.e. on attaining the age of 55 years or on completion of 30 years of service, an option is given to both the employer as well as the employee to give notice. Under the circumstances, in a given case, where an employee has attained the age of 55 years or completed of 30 years of service, the employee can use his option to retire voluntarily from service, or an employer can use its option to compulsorily retire an employee from service. In that view of the matter, reading regulation No. 19 as a whole, the only logical interpretation which can be given to it is that 58 years is the age of superannuation, and on attaining the age of 55 years or on completion of 30 years of service

an employee can be retired compulsorily by giving notice and an employee can voluntarily opt to retire – both by giving notice of three months. In such an eventuality, an employer may retire an employee in public interest if the services are not found satisfactory or looking to the service record, he is not required to be continued further. Similarly, an option is also given to the employee to retire from service voluntarily, by giving three month's notice. As pointed out earlier, if a person has to retire on reaching the age of superannuation, there is no question of giving notice by either side. In that view of the mater, on attaining the age of 55 years or on completion of 30 years of service, an employee can be retired compulsorily by resorting to these regulations. In order to see that such an employee can retire voluntarily or an employer can resort to such power by retiring an employee earlier, the proviso is finding place in the regulation, but in any case, an employee has no right to continue in service the moment he attains 58 years, and no option is available to the employee thereafter to continue in service. However,t here is an option on the part of the Corporation to continue an employee in service by extension of

service up to the age of 60 years, as provided in the regulation. At this stage, it is also required to be noted that if an employee has retired on attaining the age of superannuation, there cannot be any question of preferring an appeal, and there is also no question of deciding such appeal. In the instant case, the appellate authority has also decided the appeals, treating it as a case of compulsory retirement, It is also required to be noted that as per the affidavit-in-reply, the Board has introduced the scheme of VRS at the relevant time in view of the financial crisis of the Corporation, and for the same reason, now they are resorting to the provisions of regulation 19. According to the submissions of learned advocates for the petitioners, this is nothing but an afterthought. The fact that the Corporation itself had floated the scheme for voluntary retirement to employees and officers who have attained the age of 55 years would go to show that otherwise, the age or superannuation in ordinary course would be 58 years. If an employee has to retire automatically on attaining the age of 55 years, then there is no question of floating a scheme for voluntary retirement for those employees who have attained the age of 55 years, because

even otherwise also, they would have retired on attaining that age by way of superannuation.

37. So far as financial difficulties is concerned, this can be a ground by which an employee can be made to retire in public interest or on genuine grounds, but under that situation, the Corporation has either to abolish the posts or compulsorily retire its employees. However, on that ground, the Corporation cannot resort to regulation 19, for retiring a person treating him to have been retired on attaining the age of superannuation. In that case, powers are to be exercised only in public interest, as in a given case, on the said ground of financial crisis, the Corporation cannot resort to regulation 19 for retiring an employee treating him to have attained the age of superannuation. In that case, powers can be exercised only in public interest. In a given case, on the said ground of financial crisis, the management can exercise the powers to retire an employee but that would be after following the procedure in this behalf. In a given case, perhaps, the principle of last-come-first-go may also be required to be followed. However, the Board cannot take shelter of regulation 19 to fix the

age of superannuation, which was never earlier treated to be the age for superannuation. In that view of the matter, in my view, the action of the Corporation in retiring the employees on a 'wholesale' basis on the ground that they have attained the age of 55 years or completed 30 years of service is arbitrary and discriminatory. Even otherwise, in my view, in the absence of any guidelines in this behalf, the action of the Corporation is vulnerable and would suffer from the vice of arbitrariness. The way in which the Corporation has followed the Regulation in the past is also relevant. Mr. Nanavati has also fairly submitted that if there was no financial crisis, the present set of employees also would have been allowed to continue upto the age of 58 years and only because of financial difficulties, the decision is taken by the management to retire them by resorting to Regulation 19. All throughout, the Corporation has treated the age of 58 years as the age for superannuation. For the first time, the Corporation has tried to deviate from the same and that too under the guise of financial crisis. Considering the provision of the regulation as quoted hereinabove, the petitioners are entitled to continue upto 58 years unless they have been

required to be retired in public interest by giving notice, as stated hereinabove. As stated above, the Corporation can, in an individual case, still exercise the powers, by giving notice and after examining individual cases, may retire an employee in public interest on attaining 55 years or on completion of 30 years of service. Since the Corporation has provided for issuance of notice in that eventuality, after following the said procedure, an employer can compulsorily retire and employee or an employee can take voluntary retirement. In order to save the regulation from the attack of arbitrariness or discrimination, in my view, the rule is required to be interpreted in the aforesaid manner, by holding that 58 years is the age of superannuation; attaining the age of 55 years or completion of 30 years of service is to be considered only for compulsory retirement of an employee by the management and for taking voluntary retirement by an employee. Under the circumstances, in my view, the impugned orders of retiring a group of employees on an enmasse manner on the ground that they have reached the age of superannuation on completion of 30 years of service or on reaching age of 55, is arbitrary. As stated above, in a given

individual case, the Corporation can exercise the powers under regulation 19 to compulsorily retire an employee by considering the service record of individual employee or in public interest. If the argument of Mr. Nanavati is to be accepted, then an employee can even made to retired at any point of time before he reaches the age of 55 years of age, if he has completed 30 years of service by resorting to the provisions of regulation 19. It is also pointed out to this Court that if the management wants to retain an employee even after attaining the superannuating age of 58, specific order of extension of service is passed, and such extension can be granted upto the age of 60 years. However, in none of the cases on hand, such specific orders of extension are passed eventhough some of them have completed 30 years or service or attained 55 years of age some time ago. That also would show that as per the normal practice, a person is allowed to continue upto the age of 58 years of age. Extension is given thereafter by passing specific orders. In none of the cases with which we are concerned, such extension is given. I am, therefore, not in a position to agree with the submission of Mr. Nanavati that if an employee is continued in service on

completion of 30 years of service or on attaining 55 years, then such continuation is deemed extension.

38. As stated earlier, in view of the second part of the second proviso of regulation 19, the only interpretation that could be made is that on completion of 30 years of service or on attaining 55 years of age, the employer may either compulsorily retire an employee or an employee may opt for voluntary retirement by giving notice of 3 months to either side. In that view of the matter, it is not necessary to examine whether the 1961 Regulations have been superseded by the 1972 Regulations. If the 1979 Regulations is to be applied, then it is conceded by both the sides that an employee has a right to continue upto 58 years. However, since there is nothing before the Court to show that the said Regulations of 1972 have come into existence, in my view, the 1961 Regulation holds the field.

39. It is required to be noted that as per the Regulation No. 19 which provides for retirement of an employee on his attaining the age of 58 years or on completion of 30 years of service, whichever is earlier. It is not in

dispute that none of the petitioners have attained the age of 58 years. Some of them have completed 30 years of service and some have attained the age of 55 years and they have been ordered to be retired from service as per regulation No.19. In some cases neither the petitioners have reached the age of 58 years nor have completed 30 years of service, yet then have been relieved from service on the ground that they have attained the age of 55 years. So far as the aforesaid set of employees are concerned, it is vehemently argued on behalf of the petitioners that when these employees have not reached the age of 58 years and have not even completed 30 years of service, the action of the Corporation in retiring such employees is arbitrary and unjust. It is submitted on behalf of the petitioners that such powers can be exercised only in a given case individually where it is found that a particular employee is not worth for continuing in service and in public interest he can be asked to retire. It is submitted that if 55 years of age is treated to be the superannuating age, then the regulation No.19 would not have provided for issuance of notice, and on attaining the age of 55 years, an employee would have retired from service

without the requirement of being issued a notice. It is submitted that there is absolutely no justification by retiring an employee on attaining the age of 55 years on the ground that the same is the age of superannuation. It is not even the case of the Corporation that on attaining the age of 55 years, an employee is required to be retired by way of superannuation as per rule. Mr. Nanavati, however, submitted that there are three stages wherein an employee can be said to have retired from service and the stage which is being pressed into service in the stage where the employee has attained the age of 55 years. In my view, there is absolutely no justification on the part of the Corporation to retire an employee wherein an employee has neither reached the age of 58 years nor completed 30 years of service, as provided in regulation No. 19. So far as the second proviso of regulation No. 19 is concerned, the same will operated in the field only when according to the Corporation, a person is required to be retired from service on his attaining the age of 55 years if the employee is not at all useful or if he is a 'dead-wood'. In such circumstances, naturally, an employee can be retired on attaining the age of 55 years

after giving him notice as provided under the second proviso. Under the circumstances it is not possible to agree with Mr. Nanavatis contention that there are three stages of superannuation, i.e. attaining the age of 58 years or 55 years or 30 years of service. At least those employees who have not completed 30 years of continuous service cannot be made to retire under the guise that they have reached the age of 55 years, unless such a step is required to be taken in public interest. Even an employee is also given such option by which he can retire from service after giving three months' notice. Reading the said regulation, in my view, the action of the Corporation in retiring the employee on the ground that such an employee has reached the age of 55 years but has not completed 30 years of service, is not sustainable, and it is not possible to accept the submission of Mr. Nanavati that attaining the age of 55 years is also the age of superannuation. Such an argument goes counter to the first part of the regulation 19 itself. Under the circumstances, those petitioners who have reached the age of 55 years but have not completed 30 years of service cannot be made to retire unless such powers are exercised in public interest.

40. If an employee is to retire automatically on completion of 30 years of service, there cannot be any option available to him to give notice declaring his intention to retire as provided in the proviso. That itself would show that an option is given to the employee to retire from service at his option. Similar is the situation on attaining the age of 55 years. In my view, therefore, at both the said stages, either an employee can be permitted to voluntarily retire or an employer can retire him compulsorily in which case the employee would be entitled to get the legitimate dues.

41. In the result, the petitions are allowed. The impugned orders retiring the petitioners are quashed and set aside. It is held that the petitioners have right to continue till they attain the age of 58 years. It is, however, clarified that in an individual case, it will be still open to the Corporation to exercise the powers under regulation 19 to compulsorily retire an employee by considering the service record of individual employee or in public interest, if by considering the service record such employee is not required to be continued any further in the service.

42. The petitioners are directed to be reinstated in service with continuity of service and all other consequential benefits. It is directed that the Corporation shall reinstate those petitioners who have not taken the retiral benefits within 15 days from today. It is further directed that those petitioners who have taken the retiral benefits shall repay the same to the Corporation within 15 days from today, and within 15 days from the date of such repayment, the Corporation shall reinstate such petitioners. It is clarified that the Corporation shall reinstate such petitioners only after repayment of the retiral benefits, and if any petitioner fails to repay the said amount, it shall be presumed that they are not interested in reinstatement.

43. Rule is made absolute accordingly in each of the petitions. No order as to costs.

[P. B. MAJMUDAR, J.]

mathew